

**GEORGETOWN-SCOTT COUNTY PLANNING COMMISSION
REGULAR MEETING
MINUTES
APRIL 14, 2022**

The regular meeting was held in the Scott County Courthouse on April 14, 2022. The meeting was called to order by Chairman Mark Sulski at 6:00 p.m. Present also were Commissioners Duwan Garrett, David Vest, Rhett Shirley, Mary Singer, Charlie Mifflin, James Stone, Dann Smith, Brad Green, Director Joe Kane, Planners Matt Summers and Elise Ketz, Engineer Ben Krebs, and Attorney Charlie Perkins. No Commissioners were absent.

Chairman Sulski asked for prayers in remembrance of Sam Herrington and announced the time and place of his visitation. It was also noted by Chairman Sulski that Brad Green was sworn in by Attorney Perkins prior to the start of the meeting.

Motion by Singer, second by Smith, to approve the March invoices. Motion carried.

Motion by Stone, second by Mifflin, to approve the March 10, 2022 minutes. Motion carried.

Motion by Singer, second by Smith, to approve the April agenda. Motion carried.

Postponements/Withdrawals

Chairman Sulski stated that the applications for Bluegrass Campground (FSP-2019-45), Courtney Property (FSP 2022-17), Redwood Apartments (PDP 2022-21) and Worldwide Equipment (PDP 2022-23) are postponed until the next regularly scheduled meeting. Application for Online Transport (PDP 2021-53) has been withdrawn.

Chairman Sulski announced that two applications the Singer Property and The Barkley Meadows application would be moved to the end of the agenda due to their being multiple attorneys present to speak on those agenda items and they could run a long time.

Consent Agenda

A representative of the Beckett Property (FSP-2022-07) agreed with their conditions of approval, and no comments were made by the Commission or Public. Motion by Mifflin, second by Shirley, to approve the application. Motion carried.

A representative of the Varellas Property (FSP 2022-18) agreed with their conditions of approval, and no comments were made by the Commission or Public. Motion by Stone, second by Garrett, to approve the application. Motion carried.

A representative of the Ott Property (FSP 2022-19) agreed with their conditions of approval, and no comments were made by the Commission or Public. Motion by Shirley, second by Smith, to approve the application. Motion carried.

A representative of the Lone Tree Property (PDP 2022-20) agreed with their conditions of approval, and no comments were made by the Commission or Public. Motion by Garrett, second by Vest, to approve the application. Motion carried.

FSP 2022-02 Butler Property – Final Subdivision Plat to subdivide one (1) 5.0-acre lot leaving a remainder of about 78 acres located at 1741 Bond Pike.

All those intending to speak before the Commission were sworn in by Mr. Perkins.

Mr. Summers introduced the application and went thru the background. He stated the proposed lot meets all of our zoning requirements for the A-1 District and recommended approval.

Justin Drury, surveyor with Aim3D stated he was available for questions. Mr. Mifflin asked if the KYTC permit for the new entrance had been granted. Mr. Drury stated it had.

Dale Mulberry, Bond Pike, stated he did not have a problem with the one five acre tract, but he asked the Commission to consider the condition of the road when contemplating future subdivision approvals on the road. He showed images of the road and stated it has very dangerous curves and hills and the road has only been patched. He stated the road is not wide enough or sufficiently built to handle a subdivision.

Commissioner Mifflin stated there are many roads in the county in a similar state and suggested Mr. Mulberry should contact his magistrate and speak to them about his concerns to put some pressure on the state to improve some of the state-maintained rural roads.

After further discussion, **Motion by Mifflin, second by Singer to recommend approval of the Final Subdivision Plat (FSP-2022-02) subject to five (5) conditions of approval. Motion carried unanimously.**

PSP-2022-05 Villages of Lanes Run & Bell Farm – Preliminary Subdivision Plat (Bell Farm) and Amended Preliminary Subdivision Plat (Villages of Lanes Run, Ph.4) located north of Lanes Run Creek, east of Old Oxford Road.

Mr. Kane introduced the application and reviewed the background and history. He stated the current request was to amend the final section of Villages of Lanes Run and to approve a new Preliminary Plat for a portion of the Bell Farm.

He stated the two sections were shown together and included in the same application because they share the same developer, and the road network is integrated between the two areas. He stated that

staff did meet with the applicant multiple time to try to improve the street layout and improve connectivity to adjoining parcels. There are three variances requested in the Bell Farm portion. A variance to increase the maximum length for a cul-de-sac street from 600' to 800', a decrease in the ROW for the main collector street from 60' to 54' and a reduction in the front setback from 30' to 20'.

Mr. Kane stated staff supports these variance requests. Mr. Kane stated Villages of Lanes Run Ph. 4 Amended Preliminary Subdivision Plat was approved as a Planned Unit Development (PUD) which allows for flexibility in lot width and sizes if the resulting subdivision provides other public benefits in the form of usable open space or increased landscaping or other amenities or improvements.

Mr. Kane stated that the applicant was seeking to increase the density in the Villages of Lanes Run by 54 dwelling units, but was providing increased buffers and 2+ acres of usable open space. The original Villages of Lanes Run subdivision was approved at 3.5 dwelling units per acre, but its R-1C zoning does allow for densities of up to 4.4 dwelling units per net acre.

Mr. Kane went through the review comments from the staff report including stormwater, landscape buffers and open space. Mr. Kane mentioned the private buffer agreement with the Bell Farm and the recommendation that the lot widths be maintained at 100' width along Oxford Manor subdivision and the Urban Service Boundary.

Mr. Kane stated staff is recommending approval of the Amended Preliminary Subdivision Plat for Villages of Lanes Run, Ph. 4 and the Preliminary Subdivision Plat for the Bell Farm, with the conditions of approval in the staff report.

Chairman Sulski asked about a lot that is shown in an area identified as wetlands and whether that was a buildable lot. Mr. Kane replied that the applicant would need to obtain the required state and federal permits to develop the wetland area.

Doug Charles, applicant and developer, stated that this has been a seven-month process and they have worked collaboratively with the staff. The lot width and average lot sizes are well over the minimum allowed. Mr. Charles stated they have spent over \$200,000 widening Old Oxford Road and there will be additional improvements still to come in the form of turn lanes. A traffic study was submitted to staff and that has driven a lot of the decisions on the layout.

Doug Charles stated that they have engaged a wetlands study and if the area mentioned cannot be mitigated it will be avoided. Mr. Charles stated a project of this size will be likely 4-5 year build-out at minimum.

Fred Clemons, 766 Old Oxford Road, stated he was glad to hear about the 100' lot widths at the boundary with Oxford Manor subdivision, but questioned what the buffer would look like? He stated concerns with the number of additional cars that would be on Old Oxford Road from this development.

Debra Lunsford, 114 Abbey Road, stated she had been a resident since 1997 and stated her and her husband have both been hit on Old Oxford. Is concerned about traffic and condition of Old Xford and is not happy with additional traffic. Ms. Lunsford asked for confirmation that traffic would not come thru her subdivision. Staff confirmed it would not.

After no further discussion, **Motion by Garrett, second by Singer to recommend approval of the Preliminary Subdivision Plat (PSP 2022-05) subject to sixteen (16) staff conditions of approval, including the stated variances. Motion carried 7-2, with Vest and Green opposed.**

FSP 2022-16 Kelly Property – Final Subdivision Plat to subdivide a 49.16-acre parent tract into five (5) parcels located at 175-249 Barkley Road.

Ms. Ketz introduced the application and went thru the background. She stated the property is zoned A-1 and the applicant is proposing two new entrances. Ms. Ketz discussed the existing and proposed entrance locations. Ms. Ketz stated the County Fire Department did recommend a new hydrant be installed on Barkley Road. Ms. Ketz stated that staff was recommending approval with the six conditions in the staff report.

Harold Simms, Attorney for the applicant, stated that the tracts were being created to convey four tracts to the owners four children. He stated that the consolidation mark on the plat was an error and that will be removed. Mr. Simms stated they are working with the Fire Department to provide a hydrant and a wider pull off area next to the hydrant.

Mr. Simms stated the only disagreement with staff is with the sight distance on parcel 5. He stated that removing vegetation along the road and lowering an existing berm he believes they will have plenty of sight distance at the proposed driveway. Mr. Simms stated after discussion with the County Road Supervisor and Planning Commission Engineer he thought there was consensus that the most important thing was sight distance and not the minimum 250' driveway separation between driveways.

Mr. Simms distributed photos of the proposed driveway location on parcel 5 and explained proposal to increase sight distance. Mr. Simms stated the existing conditions of approval will accommodate their proposal to make the proposed driveway location usable. Mr. Simms stated that the applicant is willing to accept the conditions of approval as proposed.

Frank Byrd, 205 Hinton Cemetery Road, stated he backs up to the proposed subdivision and he has a pond back there and is worried about future subdivision of the property creating more lots and with water run-off silting his pond.

Bill Karne, 145 Hinton Cemetery Road, stated he was not opposed to the development. He stated Mr. Byrd's concerns were not unfounded, but they can be addressed daily during construction. He stated he believed Mr. Kelly meets all the requirements.

David Meadows, Barkley Road Stated if the concern is what will happen in the future. Stated nobody knows what will happen in the future and what we need to look at is what is right now and based on what is before the board right now, it should be approved.

Harold Simms responded to Mr. Byrd's concern about re-subdivision of Tract 5. He stated if that were considered it would have to come back to the board as any re-subdivision of any parcel would. As far as silting, the building inspection department has rules that address that. He stated the applicant has put together the best application possible and should be approved.

Commissioner Mifflin asked staff for the record, how the lots lay?

Ben Krebs, Planning Commission Engineer, stated the lots were typical of the northern part of the county and very hilly and do drain away from Barkley Road which is on a ridge. Mr. Byrd acknowledged that he was the low point. Mr. Krebs stated that this is out in the county and large tracts, so silt fencing would likely not be required. He stated anyone could plow up their fields and plant crops and nobody is putting in silt fence.

Commissioner Shirley discussed the lack of frontage on tract 5 and likely only one entrance would fit, so if it were to be subdivided the entrance would need to be shared, so he stated that would be unlikely to happen. Mr. Byrd responded that somebody could sell them another easement for access.

After further discussion, **Motion by Shirley, second by Smith to recommend approval of the Final Subdivision Plat (FSP-2022-16) subject to six (6) conditions of approval. Motion carried unanimously.**

PSP-2022-14, PDP 2022-15 & PDP 2022-24 Singer Property - Preliminary Subdivision Plat for 74 single-family lots and 151 townhome lots and Preliminary Development Plan for 151 townhome units and a 90-unit senior living building, clubhouse, pool and dog park.

Commissioner Singer recused herself from the hearing and left the room.

Mr. Summers introduced the applications and stated he will cover the Preliminary Subdivision Plat first and then the Preliminary Development Plan. He stated the rezoning and annexation was approved late in 2021.

Mr. Summers stated this project was rezoned R-2 (PUD) Planned Unit Development and received a number of waivers or variances at the rezoning stage. He stated PUD's are allowed flexibility in lot sizes and widths in exchange for greater amounts of open space or other amenities. He stated the waivers are listed on page 2 of the staff report.

Mr. Summers reviewed proposed layout of the proposal. The rear access single-family lots at the front of the subdivision will face the main boulevard and the Brown property to the north. He stated that these are smaller lots and staff will not support future variances on these lots due to their size. The additional

waivers requested for the rear access lots were discussed. Mr. Summers stated that a buffer is required along the northern boundary with the Brown property in order to protect the privacy of the neighboring property.

Mr. Summers reviewed the suburban front access lots which are proposed on public streets. He stated there is a stub road to the Brown property in the area of these lots.

Mr. Summers reviewed the townhome Preliminary Subdivision Plat lots, which will all be rear access from private driveways.

Mr. Summers stated the main road that stubs to the property to the south should be a continuous road for its entire length. He stated that originally, this stub road to the south was in a location that made it unfeasible due to the steep slopes. He stated the applicant has revised the proposed location of this road and the revised location is more favorable to staff.

Mr. Summers reviewed the traffic lane improvements proposed at the entrance. He stated that a sidewalk along US 25 at the entrance is also required.

Mr. Summers reviewed the Preliminary Development Plan for the townhome area. He stated that the applicant is not proposing development in any of the sinkhole or karst areas north of the townhome buildings. He stated an 8-foot path is shown around the sinkhole areas that will tie into the street sidewalks.

Mr. Summers reviewed the park areas, walking path extension and senior living facility. He stated the applicant received a waiver for the 90-unit building and a reduction in required parking for the senior living building. He stated that a landscaping buffer will be required along the southern boundary of the senior living facility.

Mr. Summers reviewed the staff recommendation with waivers and conditions of approval.

Commissioner Mifflin asked about the location of the original stub road to the south and where it was relocated on the plan. Mr. Summers clarified it on the plans.

Commissioner Green asked for clarification from Mr. Summers about the width of the continuous road.

Richard Murphy, Attorney for Anderson Communities, introduced himself and the members of the Anderson Communities team present. He stated that the zone change has been heard and approved. He stated this is the next step in the process to get approval of the Preliminary Development Plan's and Preliminary Plat's.

Mr. Murphy stated he wanted to show the Commission examples of the building types proposed. He showed examples of rear entrance homes and townhomes from similar Anderson Communities as those proposed.

Mr. Murphy stated that the benefit of PUD's are the increased open space and amenities. He described the amenities proposed at the Singer property.

Mr. Murphy stated they have worked diligently to solve all the issues raised by staff and have worked thru the majority of the issues.

Mr. Murphy showed the access road to the Bevins property to the south. He stated they have added 465 SF of road length that Mr. Anderson will construct at his expense to provide access to the Bevins property.

Mr. Murphy stated that there is an issue with an old easement thru the Singer property to the Bevins property that is subject to litigation between the two families now. There is a question as to whether it exists or does not exist or was abandoned. He stated that Anderson Communities is not involved in that lawsuit. He stated that the location of that is on the east side of the property. They have not shown any buildings and have kept that area open. He stated if the court finds that it does exist they will show it, but have not at this time, since it is part of a lawsuit yet to be decided.

He stated that staff has asked to show all existing or proposed easements. He stated they will show it on future drawings, but with a note that states it is a matter of civil litigation in Scott Circuit Court. He stated once the Court makes their ruling Anderson Communities will comply with that ruling.

Mr. Murphy stated he wanted to talk about one other item and that was the clause in the Subdivision Regulations that says when the development goes above 200 single-family homes or 100 multi-family units the development will have a second entrance to a public street.

Mr. Murphy stated that there are two reasons for a requirement like that. The first is emergency access and the second is general traffic flow. Mr. Murphy stated that they have discussed the proposal for a gated second entrance with the Georgetown Fire Department and he provided an email response from Tim Thompson, Georgetown Fire Marshall that stated that Georgetown Fire would be satisfied at this time with a second gated emergency entrance until such time as a permanent entrance was available. As long as the gated entrance would accommodate their trucks.

Mr. Murphy stated that the applicant would like the Planning Commission to use actual trip generation numbers to trigger a second entrance requirement. Mr. Murphy provided the trip generation numbers for their proposed phase 1. He stated based on Institute of Transportation Engineers (ITE) Trip Generation Manual studies their trip generation is equivalent to 200 single-family homes. Mr. Murphy asked for approval to build all of what they are proposing in phase 1 and not be limited to 150 dwelling units as is proposed in the staff report.

Commissioner Sulski opened up the hearing for public comments.

Nathan Billings, Attorney for Mr. Bevins, discussed the proposal for a second gated entrance and stated that the applicant should be held to the requirement that they provide a second entrance to a public street prior to developing more than 150 units as was agreed to at the zone change stage.

Mr. Billings discussed concerns with access and asked for the Planning Commission to postpone the project so details can be worked out.

Mr. Billings stated their requests are for postponement so that, one, the passway easement can be added to the Preliminary Plat, two, the details of the stub road access to the Bevins property can be reviewed by Mr. Bevins and Mr. Billings stated that the 150 maximum dwelling units should be kept as a condition.

Mr. Billings discussed Mr. Bevins current access restrictions to his property. Mr. Billings went through the history of the pass-way easement for the Bevins property thru the Singer property. Mr. Billings then reviewed the issues with the stub road to Bevins property. He stated the road stub to the Bevins property needs to be evaluated in more detail to make sure the new location is feasible.

Mr. Billings restated his concerns with not holding the applicant to the maximum 150 dwelling units without a second entrance. Mr. Billings stated his belief that this project is incomplete based on all the planning staff concerns noted in the staff report.

Mr. Billings stated he is asking for postponement, but if the Planning Commission does approve, he asks they don't grant any variances to the recommended conditions of approval.

Commissioner Mifflin asked about the location of the proposed temporary gated entrance that was discussed earlier.

Dennis Anderson, applicant, stated there are multiple options and he will talk to the Catholic Church about a connection through Cardome.

Commissioner Mifflin asked where the second gated entrance if installed, where would it go to?

Mr. Anderson stated he is asking for the units shown before a second entrance.

Mr. Murphy stated the emergency connection would come through the Singer home driveway and tie into the main Boulevard and provide a second emergency entrance from day one.

Bill Nelson, 104 Stapleton Way, Executive Director Cardome Renaissance Center, stated they have a school up and operating on the Cardome property. He stated he has heard from there is a high-pressure gas line along the boundary with the Singer property and he is concerned with grading around it. He stated he has not had a formal request from anyone to do anything with their entrance. He stated they are open to discussion. He asked how far the main entrance to the subdivision from the Cardome school northern entrance.

Planning staff responded with the distance.

Stuart Thayer, 133 Keelridge Drive, Georgetown, stated he is concerned with a sinkhole on the Singer property that exists that is not documented or shown on any of the plans. He stated in times of heavy rain the sinkhole discharges water. He stated he recently spoke to an expert on radon. He specifically talked about this sinkhole with the expert. He discussed radon and his concern that changes to the karst could affect the radon readings in nearby houses. He stated he was also concerned about flooding due to changes to the karst system.

Yvonne Thayer, 133 Keelridge Drive, stated she wants the 150-dwelling unit limit maintained. She discussed the traffic problems in the area. She stated in her opinion a second gated emergency entrance is not adequate.

She stated she has been opposed to the development from the beginning because the late Mr. Singer told them when they first moved in that the property would never be developed. She asked that the project be denied or postponed.

Robert Smith, 129 Keelridge Drive, stated he has multiple concerns. He stated traffic on US 25 is a major concern. He stated he doesn't want promises he wants plans. He stated he has significant concerns with the number of homes proposed. He stated in his opinion this is a poor plan and should have fewer homes. He stated his concern that the traffic study does not take into account other existing developments that have been approved in the area.

He stated that a plan is needed for a second entrance. He also stated a second lane added to the Colony entrance by the city is just talk at this time. He stated approving this plan without improving the existing traffic problems would be a dereliction of duty.

Clint Bevins, 804 Cincinnati Road, stated there are three gates to the Singer property at the northern entrance to Cardome. He discussed the access limitations to his property and the reasons access from the Singer property is so important. He stated his property is landlocked. He stated he needs time to review the proposed new road connection to his property. He asked the Commission to postpone until something is concrete and contractual on the road access.

Jon Woodall, Attorney for John and Mary Singer, stated the develop has pledged to provide a road access to the Bevins property. The exact location will be worked out. He reviewed the title history on the passway easement.

Mr. Murphy, Attorney for Anderson, stated that the zone change was approved by the Planning Commission and the City Council and this is another step in the process. This approval does not allow the start of construction. Many of the issues brought up will be addressed by a detailed set of constructions plans. He stated they are opposed to the postponement, because many of the issues will

not be answered until construction documents are prepared. The Commission should rely on staff to fulfil the duties.

Mr. Murphy stated the traffic study was reviewed at the zone change. He stated the fire gate was reviewed by the Georgetown Fire Department and they said yes that will work. He stated the road connection to the Bevins property was designed by Mike Craft, Anderson Communities engineer to meet all the requirements of Scott County.

Mr. Murphy stated that this property has had a detailed environmental study and the sink hole brought up previously was not identified as a sink hole. He stated the pass-way easement in dispute will be settled by Scott County Circuit Court. He stated, they will abide by whatever the decision of the court is.

Mr. Murphy stated they have complied with every request of staff. The only remaining issue they are not in agreement with is the limitation of 150 dwelling units. He has already provided the justification for allowing the number of units shown on the plan based on actual traffic generation anticipated from the units shown. He stated he is requesting approval of the Commission so they can proceed forward.

Commissioner Garrett, commented on the early statement of plan versus action. He stated that it was brought up that Cardome has not been spoken to yet. He also asked what how the radon will be addressed.

Dennis Anderson, stated they mitigate radon on homes during construction. He stated they will not build on a sinkhole. He stated they have sounded the whole property and core drilled the site twice. He stated they are confident of their findings. He stated they have spoken with Cardome four or five times. He has spoken with different members of the board then the gentleman who spoke earlier. He stated they will have the second entrance before they proceed to phase 2.

Commissioner Green, stated he has questions about the sinkhole

John Singer, property owner, discussed the sinkholes on the property and stated the area that was called a sinkhole earlier is actually a wet weather spring. He stated it is not a sinkhole.

Mike Craft, Anderson Communities, stated that no work in a sinkhole is allowed by Scott County Ordinance. He stated as they prepare construction plans these issues will be addressed.

Mr. Billings, stated what we are talking about is levels of trust. He stated Mr. Bevins wants to make sure he is considered and included in the plans that directly affect his access and future use of his property. He stated he is not requesting denial. He is asking for postponement to allow for time to work on some of the issues that are still not resolved.

He stated that the Planning Commission has still not heard a legal justification as to why the Planning Commission should vary from its ruling in the zone change hearing or vary from staff's recommendation

that 150 units is all that should be done on this property until a second entrance is provided to a public right-of-way.

Mr. Smith, stated that there were multiple postponements on this project at the zone change stage. Because of this he stated he was not able to comment on the traffic earlier. He stated he is concerned with the lack of transparency if this is approved and things are later worked out without public awareness.

Mr. Thayer requested any members who wanted to do a site visit are welcome to his property.

Commissioner Shirley stated that this is called a Preliminary request for a reason.

Commissioner Mifflin asked Ben Krebs, Planning Commission engineer, if the processes were in place to address the concerns raised.

Mr. Krebs, stated that the Subdivision and Development Regulations address sinkholes. He stated that it appears the area is a wet weather spring which is common in construction. They will have to address that as a spring outflow and will have to be addressed when they are designing the road.

Mr. Smith stated that the previous postponements were because things were brought up that they needed to address and this increased trust from him that they addressed concerns.

Commissioner Mifflin discussed traffic generation numbers. He stated he had a couple of concerns when the discussions started about the access and second entrance. He asked staff when the second entrance is required to be shown?

Charlie Perkins, Planning Commission Attorney, stated that there are processes and rules that make sure things are done according to adopted regulations. He stated that all the issues raised will be addressed during the construction plan review and other staff work.

Chairman Sulski, stated that he believed that the applicant has been working to address all the staff concerns. He stated that it is important to protect due process.

Commissioner Mifflin, stated that Mr. Anderson has changed plans before, but not without first getting those changes approved by the Planning Commission.

Commissioner Shirley, stated that the easement issue is for the courts to determine. If the court decides its required and they don't put it in they don't get a neighborhood.

Commissioner Green, stated that in his mind he sees a product that appears unfinished and once its approved the Planning Commission will not see it again. He stated he would like to see all the issues are addressed before it is voted on.

Mr. Perkins stated that some aspects of the development like the easement are not in the Planning Commission authority to approve.

After further discussion, **Motion by Smith, second by Mifflin to approve the Preliminary Subdivision Plat (FSP-2022-14), and Preliminary Development Plans (PDP 2022-15) and (PDP 2022-24) subject to all staff conditions of approval. Motion carried 5-3 with Garrett, Vest and Green opposed. Mary Singer recused herself.**

A-2022-25 Barkley Meadows, Phase 2 – Request to amend Common Scheme of Development for Barkley Meadows, Phase 2, located on the north side of Cynthiana Road.

Mr. Kane reviewed the timeline of the subdivision and the requirements of the Common Scheme of Development Ordinance. Mr. Kane reviewed the steps that the Planning Commission needed to take to comply with the Common Scheme Ordinance. He stated first the Planning Commission needs to decide if the applicant has standing to make the request for approval of changes to the common scheme. He stated, if the Planning Commission determines the applicant has standing, then the applicant can take the second step and make a presentation on changes in market conditions that are necessitating a change in the common scheme and the Planning Commission can vote to approve or deny.

Mr. Kane handed the discussion to Mr. Perkins, Planning Commission Attorney, to guide the Planning Commission thru any legal issues.

Mr. Perkins reviewed the issue of standing and stated he had discussed the order of presentation with the applicant and the opposing attorney for the original HOA board, Mr. Henry Smith and they have agreed that Mr. Smith will be allowed to speak first.

Commissioner Mifflin asked for clarification on the date the original HOA was incorporated. Mr. Mifflin stated he wanted to establish that the original HOA was formed in 2016 after the Common Scheme Ordinance was adopted in 2015 and that the developer of phases 2 and 3 was aware or should have been aware of the Ordinance.

Commissioner Mifflin asked for a definition of Common Scheme of Development.

Mr. Perkins read the definition from the Ordinance.

Henry Smith, Attorney for the Barkley Meadows Homeowners Association Inc., asked for a show of hands from existing board members and subdivision members. Mr. Smith stated his contention is that the Planning Commission should not hear what a court must decide. He stated he handed out a letter to Planning Commission members that summarized his position.

Mr. Smith stated that litigation ties up the very issue the Planning Commission is trying to decide. He stated they have filed a lawsuit over the HOA governance and asked that this matter be postponed until the lawsuit is resolved.

Mr. Smith reviewed their position on standing. He stated James Monroe called a special meeting on April 6th to hold new Board elections and ratify his proposed changes to the subdivision covenants and restrictions. He stated the change in the HOA board was not legitimate because it was not called per HOA bylaws.

He stated it is his position that the Planning Commission does not have authority over HOA governance. He stated the Planning Commission should defer to Scott County Circuit Court. He asked that the Planning Commission not make a determination that the courts may overturn.

Commissioner Mifflin asked if Mr. Monroe held previous discussions with the HOA? Mr. Smith stated that there has been extensive communications between the HOA board and Mr. Monroe.

Steve Vicroy, Attorney for Via Vitae Development, LLC, Mr. Monroe's company. Mr. Vicroy stated he is asking for the same result as Mr. Smith in that he believes the Planning Commission does not need to hear this issue. He stated that in deference to Joes earlier comment, the Ordinance does not stay in place until the last home is built.

He stated he believes the Planning Commission has already approved this subdivision when they approved the Final Plat. He stated these new amendments are changes being done thru the HOA Board process and he stated there is nothing for the Planning Commission to approve. HOA governance is not something that was intended by this Ordinance. He stated his position is that the authority over the common scheme of development ceases when there is no further action required by the Planning Commission. He stated his position is that this is an HOA issue and does not need Planning Commission approval.

Mr. Vicroy stated standing is merely a legal term that states the party must have a recognized interest in the subject matter. He stated Via Vitae is the largest lot owner in the subdivision. He stated James Monroe was recently elected president of the HOA. Mr. Vicroy handed out to the Planning Commission members documents, for the record, that he will be discussing.

Mr. Vicroy summarized his points and that his believe is that Mr. Monroe does have standing.

Chairman Sulski asked how many homes are constructed in the subdivision? Mr. Vicroy stated 19 homes are constructed in phase 1. Chairman Sulski asked how many votes does Mr. Monroe have? Mr. Vicroy stated he has 127 votes based on him purchasing all the lots in phase 2 & 3.

Chairman Sulski asked for a 15 minute adjournment.

Mr. Smith stated that the special HOA meeting called by Mr. Monroe was not done according to bylaws so was invalid.

Mr. Vicroy stated that the special HOA called meeting was done pursuant to statute. He stated if the bylaws do not address a way for general membership to call a special meeting, it is addressed by statute. Therefore, we believe the special called meeting was legal. Per KRS 273.190. This is the issue being addressed in the lawsuit before Scott County Circuit Court.

Mr. Billings, Attorney for Titan Holdings, second developer in chain of title, who sold the lots to James Monroe homes and who still owns two HOA lots. He read the statute and stated that the issue of the legality of the meeting is a red herring. It is for the courts to determine. The question the Planning Commission board should focus on is the standing question.

Commissioner Singer raised the question that inaction by the Planning Commission may result in many homes being constructed making any future decisions by the Planning Commission mute because the homes will have been built.

Mr. Perkins discussed the specific wording of the Ordinance. He recommended that the Commission hear and decide on the market change requirement as it is the only item the Ordinance specifically asks the Planning Commission to consider. He suggested remaining issues can be decided by the court.

The second option recommended by Mr. Perkins would be to not take action on here presentations, but leave it all to the courts.

Commissioner Mifflin stated that the Mr. Monroe should have gone to the HOA first, Commissioner Vest agreed. Commissioner Mifflin stated, which he did and didn't like the answer so he took over the HOA. Mr. Perkins stated that the suit was filed before the special HOA meeting was called on April 6th.

Discussion continued among the board about what constitutes the scheme of development and enforcement.

Chairman Sulski stated that he didn't believe the Planning Commission should be involved in HOA governance.

Chairman Mifflin asked what will Mr. Monroe do when it is in the courts.

Chairman Vest stated he should build the homes the way he was supposed to.

Discussion continued on whether the applicant should be heard.

Commissioner Singer asked that we heard Mr. Monroes opinion.

Mr. Monroe stated when he purchased the lots he saw the deed restrictions, but the restrictions also said that the developer shall have sole discretion to approve home plans. The deed restrictions also said they could be amended with a 2/3rds vote of the members. He stated that since he knew he would own

126 lots, or more than 2/3rd of the lots, he felt by following proper procedures, within the HOA bylaws, he would legally be able to build the home models he intended.

He stated he respectfully believes the jurisdiction of the Planning Commission ended with the approval of the Final Plat. It is now an HOA issue. He stated he has tried to work with the HOA, but in the end it has been a business decision. He stated he has the votes and they are not happy with him using his votes to make the changes he is requesting.

Patricia Mitchell, Barkley Meadows resident, stated the board met with Mr. Monroe and allowed him to bring in natural gas and after that nothing we did was good enough. Commissioner Mifflin asked if they had been an HOA Board since 2016?

Commissioner Shirley stated he wanted to hear from the property owners.

Mr. Perkins stated that if the Planning Commission does not have jurisdiction it does them no good.

After further discussion, the conclusion was that this request involves legal issues that are beyond the authority of the Planning Commission Board to decide and as such, **Motion by Vest, second by Stone to decline to hear the request and to allow the courts to make their determination. Vote passed 7-2 with Mifflin and Shirley opposed.**

Rural/Urban Buffer discussion

Due to length of the current meeting, this agenda item was deferred until the May meeting

Chairman Sulski adjourned the meeting.

Attest:

Charlie Perkins, Secretary


Mark Sulski, Chairman